

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 26th day of February 1997.

Original Application no. 1315 of 1994.

Hon'ble Mr. S. Dayal, Administrative Member

Tara Charan Mukherji, S/o Sri S.C. Mukherji,
R/o Janam Ashtmi Railway Colony,
Old Station, N. Rly.,
Kanpur.

... Applicant

C/A Sri K.S. Saxena

Versus

1. The Union of India (through General Manager, N. Rly., Baroda House, New Delhi.)
2. The Divisional Railway Manager, Northern Railway, Allahabad.
3. The Senior Divisional Personnel Officer, Northern Railway, Allahabad.
4. The FA & CO, Northern Rly., Baroda House, New Delhi.

... Respondents

C/R Sri A.K. Gaur

ORDER

Hon'ble Mr. S. Dayal, Member-A

This is an application under Section 19 of the
Administrative Tribunals Act, 1985.

The applicant prays for the following reliefs in this application: -

(i) A direction to the respondents to treat the applicant as deemed confirmed with effect from 8.2.68.

(ii) A direction to the respondents to count the qualifying service with effect from 8.2.68 and revise retirement benefits on this basis.

(iii) A direction to the respondents to pay arrears arising out of revision of retirement benefits.

(iv) A direction to the respondents to pay costs of this application to the applicant.

The case of the applicant is that he was recruited as a welder in the grade of B 110-180 and was placed in the CPC scale. He was empanelled as a welder in 1983. He was promoted as a welder Grade II in the Scale of Rs 330-480 on 15-4-86. He retired from this post on 30-6-94. The applicant was not confirmed during his entire service from 8-2-66 to 30-6-94 except once on 30-6-94 although permanent posts were available earlier in the cadre. The period of his service from 8-2-66 to 1983 was counted as half due to his non-regularisation. He claims to have worked against the permanent post of welder right from 8-2-66 without break and that he should have been taken as deemed confirmed after continuous service of two years. He has cited paragraph 14 of Shri N.B. Bhattacharya's Guide to Railwaymen Establishment Rules. It states that an employee promoted after due selection or suitability test on regular basis should be given all the benefits of confirmation after two years of continuous service if there is a clear permanent vacancy and if the employee is found fit for confirmation. He also cites the judgment of the apex court in *Bhaskar Rajanar Kajrekar vs. Administrator, Sachin and Hapa Haveli*, 1993 SCC (2+3) 760 in which it has been held that confirmation is linked with permanency of post and not with promulgation of recruitment rules.

The arguments of Shri K.S. Saksena, learned counsel for the applicant and Shri A.K. Gaur, learned counsel for the respondents were heard.

The respondents have mentioned in their counter reply that there was no permanent post and the employee was being charged on E. L. A. basis. They have also stated that the applicant was confirmed

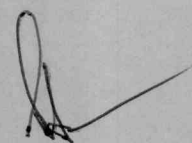
with effect from 31-1-84 by order dated 26-4-94. This confirmation was as per rules because the applicant could be confirmed one year after his empanelment on 31-1-83 after screening. The service of the applicant from 8-8-66 to 31-1-84 was counted as half on the basis of extant rules.

The applicant has admitted in his application that his service upto 1983 was in CPC scale and has been unable to show any rule that service in C.P.C. scale should be totally counted for pension. He has also not been able to show that he was promoted after due selection or suitability test on regular basis before 1983. He has also not shown that there was a clear permanent vacancy before 1984 and that he was found fit for confirmation before that date. On the other hand the facts contained in the pleadings are contrary to the claim of the applicant.

The ~~fact ratio~~^{deciding} of ~~Shri~~ Shri Ramesh Rajan Karyekar (Super) does not help the applicant as the case is not in pari-materis with the case before us. The applicant's confirmation was not delayed because of delay in promulgation of service rules. It was related to the date of his regularisation which could only be considered when the applicant's turn came. The applicant does not claim that his turn came earlier. He only claims that since he was working with effect from an earlier date continuously, the earlier date should be taken as the basis. This cannot be accepted as the applicant has not shown that he was the senior most official in CPC scale, who, by virtue of his seniority, should have been regularised from an earlier date.

In view of the above situation, the Original Application is found to be lacking in merits and is dismissed.

The parties shall bear their own costs.


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